

Dig Safe Notice No. 731

Order entered: 4/8/2011

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Walker Construction ("Respondent").
2. Incident Date: May 21, 2010
3. Incident Location: Beach Road-Elmore State Park, Elmore, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 800 Hinesburg Road, South Burlington, VT 05403
5. Date Incident Reported to Effected Utility: May 21, 2010
6. Date NOPV issued by Department: March 24, 2011 (#1825)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 5/21/10, Walker Construction was excavating to place services and storm drains at this site. Walker Construction had called for a Digsafe ticket on April 6, 2010, but this ticket expired on May 6, 2010. Walker Construction did not call to renew the ticket or to renew any marks that might be faded. On May 21, 2010, Walker Construction, digging under an expired Digsafe ticket, struck and damaged an unmarked Fairpoint wire at this site. The damages caused a loss of service to one customer for 2 hours. Walker Construction failed to maintain the marks, dug beyond the scope of the ticket and failed to renew their expired Digsafe ticket for this site. The Department of Public Service issued 0 Notices of Probable Violation (NOPVs) to Walker Construction during the 12 months preceding this incident."

8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004
9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Three Hundred Dollars (\$300.00), and attendance at a Department-approved underground damage prevention seminar.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.¹

Conclusion and Order

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.²

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Walker Construction shall pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Walker Construction shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

1. *See*, Respondent's filing of 3/29/11.

2. *See*, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 8th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 8, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.